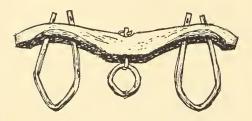
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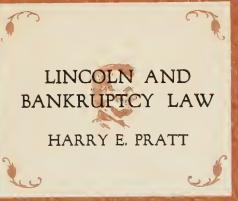
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LINCOLN *** AND BANKRUPTCY LAW

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LINCOLN AND BANKRUPTCY LAW

On no question were the Whigs and Democrats of Illinois so unanimously in opposition to each other as they were upon the Bankruptcy Law passed by Congress in the summer of 1841. Democratic opposition in Illinois, united with that in other states, forced the repeal of the law in 1843. Lawyers, however, who were Democrats did not hesitate to handle bankruptcy cases, and though the fees were small, the cases were numerous and about equally divided between attorneys of the two political faiths.

Logan & Lincoln, the leading Whig law firm in Springfield, Illinois, made up of Stephen T. Logan and Abraham Lincoln, found bankruptcy cases an important source of income in the thirteen months the law was in effect: from February 1, 1842 to March 3, 1843. They handled seventy-seven cases, more than any other Springfield firm, and a number which placed them in a tie for the fourth largest number of cases in the state.

A bankruptcy bill was brought before the Senate of the United States in the special session of 1841, by Senator Henderson of Mississippi. The measure had neither been mentioned in President Tyler's message at the opening of the session, nor was it one of Henry Clay's measures for which the session had been called. However, it was soon apparent that Henderson, a Democrat, and Walker, his Whig colleague, had enough support, principally among the Whigs, to

coerce the Senate into accepting the bill before they would vote on Clay's bank bill. Thus, with the votes of many who were opposed to its provisions, but who voted for it to obtain support for the bank bill, the bankruptcy bill passed the Senate, July 24, 1841, 26 ayes to 23 nays. The Illinois Senators were split on the vote, Richard M. Young voting for, and Samuel McRoberts against the bill.

High pressure methods were used to get the bill through the House of Representatives. passed quickly with but amendment. The amendment. which postponed the operation of the bankrupt law until February 1. 1842, was accepted by the Senate. Senator Thomas Benton, leader of the opposition which included most of the Democrats, planned to force the repeal of the bill at the regular session in December, 1841. efforts failed and the law went into operation, February 1, 1842.1

The federal district judge had considerable freedom and power in applying the bankruptcy law. He could hold court when and where he pleased, make the rules of procedure, appoint commissioners and assignees in each county. Important to the newspapers was his power to determine the place of publication of notices to creditors.²

Judge Nathaniel Pope, of the United States District Court for the District of Illinois, which met at Springfield, decided that all no-

^{1.} Thomas H. Benton, Thirty Years' View, (New York, 1893), II, 229-34. Benton devotes two chapters to the passage of the bill through Congress.

^{2. &}quot;An Act to Establish a Uniform System of Bankruptcy Throughout the United States." U. S. Statutes at Large, Vol. 5, 27th Cong. Sess. I, Ch. 9, 1841, pp. 440-49.

tices should be published in the Whig Sangamo Journal in preference to the Democratic Illinois State Register, in Springfield, which then had all other state and federal printing.³ The Register, which had previously been guarded in its opposition to the bankruptcy law, now bitterly assailed it, and continued its opposition until the repeal of the law.

Under the rules established by Judge Pope for his "Bankrupt Court," a petitioner to be declared a bankrupt first had his attorney file with the court a petition, a list of assets, and a list of creditors. A date was set for the preliminary hearing, to be held at least twenty days after filing of the petition. Notice of the hearing was published twice in the Sangamo Journal, and also in the newspaper published nearest to the residence of the petitioner. It was not necessary for the petitioner to appear at the hearing. If there was no opposition, and his papers were in order, the judge declared the petitioner a bankrupt. Few cases were contested at either the preliminary or the final hearing. Thus it was possible for Judge Pope to dispose of approximately twenty-five cases a day.

Seventy days elapsed between the preliminary and final hearing, and notice was published weekly for ten weeks in the Sangamo Journal. Notice of the final hearing was published in only one paper to save expense, which, with attorneys fees, was not less than twenty-five dollars. The Register complained that those who most needed the benefit of the act were too poor to pay the costs. Many petitioners failed to obtain a final discharge because of failure to pay court fees. A very small number, some forty out of the total of 1,742 applicants in Illinois, reduced the expense by not employing an attorney.⁴

Petitions in bankruptcy were filed by residents of eighty-seven of the ninety-four counties in Illinois. In twenty counties only one or two petitions were filed. Few petitions came from the counties in the southern part of the state. Sixteen of these counties had only seventy petitioners, a number similar to that of the county of Sangamon. Distribution of the petitioners over the state was apparently not determined by the population so much as by the lack of knowledge of the advantages of Few newspapers were the act. published in the counties in southern Illinois in 1841-1843.

The four most populous counties produced the most petitioners: Cook 100, Adams 100, Madison 85, and Sangamon 70. Hancock county had 65, which was more than twice the number to be found in other counties of equal population. The large number in Hancock were principally Mormons following the example set by their leaders, Joseph Smith, Hyrum Smith and Sidney Rigdon.

^{3.} Nathaniel Pope (1784-1850) was appointed judge of the United States District Court in 1819 and served until his death.

^{4.} The records of bankruptcy cases were taken to Chicago in 1855, when Illinois was divided into two federal

districts, and were burned in the fire of 1871. Copies of certain cases where considerable land was involved, were made in a half dozen volumes which are now in the office of the Clerk of the United States District court in Springfield. All statistics in this paper were worked out from the files of the Sangamo Journal, in the Illinois State Historical Library, Springfield, Ill.

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your case, which together with your property
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letters and sent them to your distant credit

the personal notices to your creditors reviewing
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Lincoln writes concerning a Bankruptey Case



Reproduced above is the earliest known photograph of Abraham Lincoln, probably taken in the year 1846, or shortly after the incidents recounted in the accompanying article. It is here published through courtesy of the Illinois State Historical Library, Springfield, illinois.



Stephen T. Logan, above, was senior partner in the law firm of Logan & Lincoln, 1841-1844. It was as a member of this firm that Lincoln wrote the letter reproduced in facsimile on the outside front cover page of this issue. The above photograph reproduced through courtesy of the Illinois State Historical Library, Springfield, Illinois.



Judge Nathaniel Pope, above, presided over the U. S. District Court in Illinois from 1819 to 1850, including the period in which the Bankruptcy law of 1841 was in effect. Reproduction through courtesy of the Illinois State Historical Library, Springfield, Illinois.

Although the law permitted a partnership to petition, only ten in the state did so. Women received the same privileges as men under the bankrupt law, but the name of only one woman, Sophia Dulaney of Greene county, was among the petitioners.

Despite periods of illness, Judge Pope kept the "Bankrupt Court," in almost continuous session from March, 1842, to April, 1843, taking time out to hold the regular sessions of the federal district and circuit courts. Two terms were held in Kaskaskia, the home of the Judge, and the remaining sessions in Springfield. The federal Court room in Springfield was on the second floor of the Tinsley Building at the southwest corner of Sixth and Adams Streets. This building, in which Logan & Lincoln had an office on the third floor, is in use today.

Attorney's fees in bankruptcy cases were low, averaging around ten dollars a case, thus making it unprofitable for attorneys with but few cases, who lived at a distance, to travel to Springfield to attend the court. Thus it would be expected that a large percentage of cases would be turned over to Springfield lawyers. Such was the practice. Thirteen individuals, and law firms, in Springfield handled over one-fourth of the total number of petitions. Of these firms, Benjamin S. Edwards of Springfield, and Justin Butterfield of Chicago, formed a partnership to handle bankruptcy cases. Many of their ninety-one cases were Cook

county cases sent by Butterfield to Edwards. Their leadership can also be accounted for by Edwards' appointment as commissioner in bankruptcy for Sangamon county, which brought him into touch with many of the petitioners. Logan & Lincoln, with seventy-seven cases and James Shields & James C. Conkling with seventy-three cases were the two leading firms of Springfield lawyers. Jesse B. Thomas & Mason Brayman, Schuyler Strong & John C. Doremus, and David B. Campbell, also had an extensive practice in Judge Pope's court.

George T. M. Davis, of Alton, with 114 cases, was the leading bankruptcy lawyer in the state. Onslow Peters, of Peoria, alone, and with cases sent to him by a half-dozen other lawyers in north-western Illinois, handled eighty-six cases, giving him third rank in the state.

Logan & Lincoln's seventy-seven bankruptcy cases came from twenty-five counties. Eighteen were from Sangamon, nine from Boone, five from Coles, and four from White. The Boone County cases were probably sent to them by James L. Loop, a Belvidere attorney with whom Lincoln had been associated in Scammon v. Cline, his third case in the Illinois Supreme court.5 Alexander P. Dunbar, the first lawyer in Coles County, and Lincoln's desk-mate in the General Assembly, 1836-1838, probably sent the five cases from Coles. Edwin B. Webb, a Carmi lawyer, and intimate friend and as-

^{5.} Scammon v. Cline (3 Ill. 456), in which Lincoln appeared for Cline on June 10, 1840, was long considered Lincoln's first case in the Supreme Court. However, he appeared on January 14, 1840, and asked to have the case of In-

gram v. Gibbs, an appeal from Pike County, dismissed. His second case was on June 6, 1840, Jesse B. Thomas v. Heirs of Baxter Broadwell, an appeal from Morgan County.

sociate of Lincoln in the General Assembly, was responsible for thirteen cases from the counties along the Wabash River.

The procedure followed by Logan & Lincoln in the preparation of a case sent to them is outlined by Lincoln in his letter to G. B. Shelledy, a Paris attorney, on February 16, 1842.6 He wrote:

"Yours of the 10th is duly received. Judge Logan and myself are doing business together now, and we are willing to attend to your cases as you propose. As to terms, we are willing to attend each case you prepare and send us for \$10 (when there shall be no opposition) to be sent in advance, or you know that it is safe. It takes \$5.75 of cost to start upon, that is, \$1.75 to clerk, and \$2 to each of two publishers of papers. Judge Logan thinks it will take the balance of \$20 to carry the case through. This must be advanced from time to time as the services are performed, as the officers will not act without. I do not know whether you can be admitted an attorney of the Federal court in your absence or not; nor is it material, as the business can be done in our names.

"Thinking it may aid you a little. I send you one of our blank forms of Petitions. It, you will see, is framed to be sworn to before the Federal court clerk, and, in your cases, will have [to] be so far changed, as to be sworn to before the clerk of your circuit court; and his certificate must be accompanied with his official seal. The schedules too.

must be attended to. Be sure that they contain the creditors names, their residences, the amounts due each, the debtors names, their residences, and the amounts they owe, also all property and where located.

"Also be sure that the schedules are signed by the applicants

as well as the Petition.

"Publication will have to be made here in one paper, and in one nearest the residence of the applicant. Write us in each case where the last advertisement is to be sent, whether to you or to what paper.

"I believe I have now said everything that can be of any advantage."

Some cases came to Logan & Lincoln directly from the petitioner. The method of handling such petitions is illustrated by the case of George W. Hawley of Dixon, Illinois. On March 18, 1842, notice of the filing of his petition was published in the Sangamo Journal, and the preliminary hearing set for April 8th. On the day following the hearing, notice was published of the final hearing to be held on July 11th. Lincoln's letter to Hawley on April 18 explaining what they had done, and what further steps had to be taken is one of the few letters which he signed "Logan & Lincoln."7

"Inclosed are the papers in your case, which together with your property and credits must be delivered up to the assignee at once. We have written the letters and sent them to your distant creditors according to the rule. You must give the per-

^{6.} John G. Nicolay and John Hay, eds. Complete Works of Abraham Lincoln (New York, 1905), I, 189-90.

^{7.} The letter to G. W. Hawley does not appear in any of the volumes of Lin-

coln's writings. The facsimile was obtained for the Abraham Lincoln Association by George C. Dixon, Dixon, Illinois, from Fred N. Vaughn, Amboy, Illinois, owner of the original letter.

sonal notices to your creditors residing in your own county. Your cash account with us stands as follows.

\$20.00

Of this we have expended of State Bank \$6.00 leaving on hand \$4.00.

"Of the Shawnee, we have expended for these papers \$3.00, for postage on your letter $37\frac{1}{2}$ cents; for 70 day publication \$4.00, in all \$7.37 $\frac{1}{2}$ leaving on hand \$2.62 $\frac{1}{2}$.

"Yours [truly],
"Logan & Lincoln"

Lincoln's emphasis upon the necessity of having court fees in hand before they proceeded in a case is stated by him in a humorous, but pointed letter, to Frederick A. Thomas, a Lawrenceville attorney. On April 21, 1842, Lincoln wrote: "One thing bear constantly in mind; that is, that unless I am furnished with money to pay costs as the case progresses, I can not move an inch-and State Bank paper will not do, at that. The whole cost, exclusive of lawyer's fees, will be, as we think, about \$20, in something at least as good as Shawnee."8

^{8.} Paul M. Angle, New Letters and Papers of Lincoln (Boston and New York, 1930), 13.













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